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unconstitutional because it differentiated producers who sold, from other vendors. *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540. The spirit and reasoning of the two cases are quite different. The writer of the dissenting opinion in the earlier case now announces the view of the united court. The decision is to be supported on the ground, which the opinion takes, that a legislative classification should be upheld if within the bounds of reason.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO THE CONTRACT — SOLE BENEFICIARY — MASSACHUSETTS LAW. — The defendant's testator promised the father of an infant, in consideration of the naming of the child for him, to settle a sum of money on the infant. The child, by his father as next friend, sues upon this contract. *Held*, that he can recover. *Gardner v. Denison*, 105 N. E. 359 (Mass.).

This case is somewhat startling in Massachusetts, where a sole beneficiary cannot recover at law or in equity on the contract made for his benefit. *Mars-ton v. Bigelow*, 150 Mass. 45, 22 N. E. 71. In cases where a creditor is the beneficiary of a contract made by his debtor, Massachusetts has already retreated from her former strict position, and now allows the creditor to reach the contract in equity as an asset of the debtor. *Forbes v. Thorpe*, 209 Mass. 570, 95 N. E. 955. *Cf. Borden v. Boardman*, 157 Mass. 410, 32 N. E. 469. See 25 HARV. L. REV. 289. In the principal case, in order to escape the severity of its rule concerning sole beneficiaries, the court says that the father in naming his new-born son acted as the contracting agent of the child. This is a return to the seventeenth-century reasoning which identified the child with its parent. *Dutton v. Poole*, 1 Vent. 318, 332. The clear-cut anomaly of a recovery by the sole beneficiary at law, such as exists in many American jurisdictions, is preferable to such a fiction. A recovery in equity would equally accomplish justice, and at the same time would be theoretically justifiable. See *Linneman v. Moross*, 98 Mich. 178, 182, 57 N. W. 103, 105; 15 HARV. L. REV. 773. In New York, however, the courts would permit recovery in the principal case on the curious theory that the moral obligation to support a dependent relative makes the contract one for the benefit of a creditor of the promisee. *Buchanan v. Tilden*, 158 N. Y. 109, 52 N. E. 724.

EASEMENTS — MODES OF ACQUISITION — ASSUMPTION OF EASEMENT BY ALLEGED DOMINANT OWNER. — The owner of certain lake-front property sold a portion of his land to the plaintiff city with full knowledge of the latter's purpose to install forthwith a pumping station and supply its inhabitants with drinking water. The grantor thereafter sold the remainder of his property to the defendant, who had constructive notice of the use to which the plaintiff's land was being put. The plaintiff now asks for an injunction against any user of the lake by the defendant for bathing purposes, which was granted. *Held*, on appeal, by an equally divided court, that the plaintiff is entitled to the relief sought. *City of Battle Creek v. Goguac Resort Ass'n*, 148 N. W. 441 (Mich.).

Many decisions, recognizing easements created without grant, while based in terms on estoppel, can be rested on the sounder equitable doctrine that part performance may take a contract out of the Statute of Frauds. *East India Co. v. Vincent*, 2 Atk. 83. But in the principal case it seems scarcely possible to contend that there was any contract for an easement, especially against the defendant, a stranger to the original conveyance. Equity also recognizes servitudes which because of lack of privity, or because of some informality in the necessary covenant, do not run at law. *Tulk v. Moxhay*, 11 Beav. 571. In the principal case, however, aside from the lack of any attempted covenant, there is no clear intent to benefit the dominant tenement, an element deemed equally essential to an equitable servitude. See *Keates v.*

Lyon, L. R. 4 Ch. App. 218, 224. In some jurisdictions equity has even taken the extreme step of allowing the creation of easements by parol license. *Re Rick v. Kern*, 14 S. & R. (Pa.) 267; *Rhodes v. Otis*, 33 Ala. 578; *Rochdale Canal Company v. King*, 22 L. J. Ch. n. s. 604. *Contra*, *National Stock Yards v. Wiggins Ferry Co.*, 112 Ill. 384; *Nowlin Lumber Co. v. Wilson*, 119 Mich. 406, 78 N. W. 338; *Ewing v. Rhea*, 37 Ore. 583, 62 Pac. 790. This doctrine marks a clean break from the common law, in which it can find little justification. The principal case goes even farther, in that there is here no license, and so the basis on which the doctrine usually proceeds is lacking. Nor is there any misrepresentation. The alleged servient owner's conduct was throughout consistent with the assumption that the city was thereafter to acquire water rights by condemnation. The decision tends to secure municipalities from the carelessness of their legal advisers, but it is otherwise to be regretted.

EVIDENCE — DECLARATIONS CONCERNING PEDIGREE — REQUISITE CONNECTION WITH THE FAMILY. — To prove his claim to the deceased's property, the petitioner offered declarations of his mother that she married the father of the deceased. There was no evidence of the relationship between the declarant and the deceased other than these declarations. *Held*, that the declarations are not admissible. *Aalholm v. People*, 105 N. E. 647 (N. Y.).

All the courts agree that the declarant's connection with the family must be proved by independent evidence in order to bring his declarations within the pedigree exception to the hearsay rule. *Banbury Peerage Case*, 2 Selw. N. P. 764. But there has been a wide difference of judicial opinion with respect to the meaning of "the family." The deceased's family, of course, is the one primarily concerned with the question of inheritance, but a marriage between representatives of the two families is none the less a fact in the family history of both. The broader, and what has appeared to be the prevailing view, has therefore been satisfied with proof of the declarant's relationship to either family. *Monkton v. Attorney-General*, 2 Russ. & M. 147; *Siller v. Gehr*, 105 Pa. 577. Dean Wigmore has lent his weighty support to this view, and has severely criticised its opponents. See WIGMORE, EVIDENCE, § 1491. The narrower rule requires independent proof of the declarant's membership in the family whose inheritance is in dispute. *Blackburn v. Crawfords*, 3 Wall. (U. S.) 175. The declarations offered in the principal case give an excellent illustration of the dangers of manufactured evidence involved in the more liberal rule, which would make possible the establishment of a claim by the claimant's own testimony to the assertions of deceased members of his family. Such considerations go far to justify the court's adoption of the more conservative view, and its decision in favor of a doctrine somewhat discredited in the past would seem likely to determine the trend of future American authority.

EVIDENCE — STATEMENTS IN PUBLIC DOCUMENTS — POST-OFFICE RECORDS. — To prove the time at which a telegram was delivered, records kept by the post-office officials showing the times of the receipt and delivery of telegrams were offered. These records were preserved only for a limited time, and were used chiefly for calculating the messenger boys' fees. The absence of the entrant was not accounted for. *Held*, that the records are not admissible. *Heyne v. Fischel*, 110 L. T. R. 264 (K. B. Div.).

The court holds that the absence of any opportunity for inspection by the public was a fatal objection to the admission of these records under the public document exception to the hearsay rule. This doctrine seems well established in England, on the ground that publicity reduces the probability of error. *Sturla v. Freccia*, L. R. 5 A. C. 623, 643. This reasoning, however, merely points out a possible advantage from public access, of small moment because